

Act, 1936 which corresponds with Article III, paragraph 8 of the Schedule to the Carriage of Goods by Sea Act (Chapter 184).

In view of what we have said we find ourselves in agreement with the learned authors of the above cited treatise. Our view of the law on this matter is further reinforced by a passage at page 107 of *Tetley on Marine Cargo Claims* (Second Edition) which reads as follows:—

"The phrase 'Shippers load stowage and count' used in reference to containers, however, is a proper form of qualification where the carrier cannot verify the contents of a container packed and sealed by the shipper."

We are of the view therefore that the bill of lading in the present case does not bind the carrier to any representation as to the condition or description of the contents so as to constitute an estoppel in favour of the respondents.

This being so the respondents, in our judgment, have not discharged the onus of proving that 580 cartons of Camay Soap were shipped at New York in the appellants' ship "American Astronaut" and accordingly their claim must fail. We therefore allow the appeal with costs.

Appeal allowed.

Solicitors: *Drew & Napier; Chan, Goh & Co.*

RE NICHOLAS ADDISON PHILLIPS, Q.C.

[O.C.J. (Rajah J.) April 3, 1979]

[Singapore — Originating Motion No. 1 of 1979]

Legal Profession — Admission of Queen's Counsel — Shipping case — Application disallowed — Legal Profession Act (Cap. 217), s. 18.

This was an application under section 18 of the Legal Profession Act for the admission of a Queen's Counsel, Nicholas Addison Phillips to argue an appeal in the Court of Appeal for the appellants in Civil Appeal No. 67 of 1978. The appeal arose from a claim by the plaintiffs/respondents for the sum of \$197,942.50 being the amount of damages allegedly suffered by them. The plaintiffs/respondents claimed that the defendants agreed to provide drydock space in their shipyard for the general repair of the plaintiff's ship "Master Stelios" and that the defendants would provide the facilities for a screwshaft survey. The defendants failed to provide the facilities for the said screwshaft survey, as a result of which the plaintiffs had to put the ship in drydock again at Rotterdam thus incurring loss and damage.

The parties interested in the application viz., the Attorney-General, the Law Society and the plaintiffs/respondents objected to the above application.

Held: this was not a proper case where a person should be admitted under the provisions of section 18 of the Legal Profession Act as the case was not of that complexity as to be beyond the reach of the solicitors for the appellants/defendants.

ORIGINATING MOTION.

Tang See Chim for the applicant.

J. Grimberg for the plaintiff/respondent.

K.E. Hilborne for the Law Society.

S. Thyagarajan for the Attorney-General.

Rajah J.: This is an application under section 18 of the Legal Profession Act (Chapter 217) seeking the admission of a Queen's Counsel of England (the applicant) to argue an appeal in the Court of Appeal

for the appellants in Civil Appeal No. 67 of 1978.

The relevant parts of section 18 read as follows:—

"18.—(1) Notwithstanding anything to the contrary contained in this Act the court may for the purpose of any one case admit to practise as an advocate and solicitor any person—

- (a) who holds Her Majesty's Patent as Queen's Counsel;
- (b) who does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and
- (c) who has special qualifications or experience for the purpose of the case.

(2) Any person applying to be admitted under the provisions of this section shall do so by originating motion verified by an affidavit of the applicant or of the advocate and solicitor instructing him stating the names of the parties and brief particulars of the case in which the applicant intends to appear and the originating motion and affidavit or affidavits shall be served on the Attorney-General, the Society and the other party or parties to the case and at the time of such service the applicant shall pay a fee of one hundred dollars to the Society for its costs incurred in the application.

(3) Before admitting a person under the provisions of this section the court shall have regard to the views of each of the persons served with the application."

The parties in the said Appeal are:—

Appellants: *Keppel Shipyard (Pte) Ltd.*

Respondents: *Monvia Motorship Corporation.*

The appeal arises from a claim (Suit 503 of 1975) by the plaintiffs/respondents for \$197,942.50 being the amount of damages allegedly suffered by them. The relevant parts of the amended statement of claim read as follows:—

"1. As a result of exchanges of telex messages between the defendants and the plaintiffs' agents, Messrs. Phoecean Ship Agency Limited of London, an agreement was concluded between the plaintiffs and the defendants on or about October 8, 1973 by which the defendants were to provide drydock space in their shipyard for and execute general repair work on the plaintiffs' ship 'Master Stelios' in October, 1973.

2. It was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the defendants would provide the facilities for a screwshaft survey.

3. In breach of the said agreement the defendants failed or refused to provide the facilities for the said screwshaft survey, as a result of which the plaintiffs had to put the ship in drydock again at Rotterdam in order to complete the said screwshaft survey.

4. By reason of the foregoing, the plaintiffs have suffered loss and damage."

The amended defence to the statement of claim reads as follows:—

"1. The defendants make no admission as to paragraph 1 of the Statement of Claim and put the plaintiffs to strict proof thereof. The defendants will contend that the plaintiffs' instructions as contained in the telex dated October 8, 1973 did not include a screwshaft survey.

2. Paragraphs 2 and 3 of the Statement of Claim are denied.

3. The defendants put the plaintiffs to strict proof of paragraph 4 of the Statement of Claim.

4. Save as hereinbefore expressly admitted, the defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed."

By judgment dated the 6th day of October, 1978 judgment was given for the plaintiffs/respondents in the sum claimed with interest and costs.

It was contended for the appellants that "the matters in issue are of great complexity involving the law relating to the formation of ship-repair contracts

and to damages and the amount involved is substantial" and on this it was submitted that this was a proper case for the applicant to appear and argue the said appeal for the appellants.

The parties interested in the application namely the Attorney-General, the Law Society and the plaintiffs/respondents, having been duly served appeared each by counsel on Friday, February 9, 1979 and, as does not happen often in these applications, were united in objecting to the application.

The Law Society contended that (1) the Bar is now more than capable of handling such appeals, (2) if such ad hoc admissions were allowed it would not conduce to the fostering of a strong Bar and (3) this is not a proper case for the court to exercise its discretion in favour of admission. The Attorney-General associated himself with the arguments of the Law Society. Counsel for the plaintiffs/respondents, Mr. Grimberg, who had appeared for them at the trial in Suit No. 503 of 1975, while associating himself with the Law Society and the Attorney-General, stated that in his view, this was not a proper case for the exercise of the court's discretion in favour of the application as the main issue in this case was whether on the exchange of certain telex messages between certain parties an agreement had been concluded as claimed between the plaintiffs and the defendants. In his view such matters were being dealt with constantly in our courts and should present no difficulty. If I understood him correctly he was perhaps telling me that one does not use a steamroller to crack a pea-nut. He further contended that the firm of Messrs. Rodyk & Davidson, who are and have been the solicitors for the appellants/defendants are well equipped and capable of arguing the appeal in all its aspects for the appellants.

There can be no question that the applicant has special qualifications and experience for the purposes of the appeal in question. Section 18 does not categorically set out the basis nor the criteria on which such ad hoc admissions are to be made. However, subsection 3 enjoins that, "Before admitting a person under the provisions of this section the court shall have regard to the views of each of the persons served with the application."

Counsel for the applicant put the case for the admission of the applicant under three heads, namely:—

- (1) The law relating to the formation of ship repair contracts is of great complexity;
- (2) The law relating to damages for breach of such contract is of great complexity; and
- (3) The amount involved is substantial.

Having heard the views of each of the persons served with the application particularly those of the plaintiffs/respondents I am satisfied that heads (1) and (2) are not of that complexity as to be beyond the reach of Messrs. Rodyk & Davidson, who appeared for them in the first instance and that this was not a proper case where a person should be admitted under the provisions of section 18 of the Legal Profession Act (Chapter 217).

Application disallowed.

Solicitors: Rodyk & Davidson; Drew & Napier.

A MALAYSIAN REPORTS

HO KOK CHEONG SDN. BHD. & ANOR. v. LIM KAY TIONG & ORS.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.JJ.)

November 6, 1978 and January 12, 1979]

[Kuala Lumpur — Federal Court Civil Appeal No. 82 of 1978]

Contract — Whether contract a conditional contract — Condition a term of contract — Specific performance — Contracts Act, 1950, s. 80.

In this case the first appellant had agreed to buy shares in the Perforated Plates Sdn. Bhd. for \$780,890 from the respondents. A sum of \$78,089 was paid as deposit. The balance of the purchase price was to be paid in six monthly instalments and full payment of the purchase price was guaranteed by the second appellant. Apart from the deposit no other payment was made. The respondents thereupon sued the first appellant for specific performance and the second appellant for payment of the balance of the purchase price, that is \$702,801. The respondents applied for summary judgment. The appellants opposed the application and argued that there were triable issues. It was alleged that the contract was a conditional one, as the appellants had agreed to procure the release of the respondents from certain guarantees by the completion date. Counsel for appellants argued that so long as the condition precedent was not fulfilled there could be no specific performance. It was also argued that there was no mutuality in the contract and that with the appointment of receivership over the company it was not equitable to order specific performance. The learned trial judge rejected the arguments for the appellant and gave judgment for the respondents. The appellants appealed to the Federal Court.

Held, dismissing the appeal: (1) the contract in this case was not a conditional contract. The procuring of release from the guarantees was not a condition precedent but merely a term of the contract;

(2) there was mutuality in this case, as if the first appellant obtained the release of the guarantees he could compel the respondents to deliver the shares on payment;

(3) the company was not a party to the contract which was between two shareholders and therefore the contract did not affect the receivers.

Cases referred to:—

- (1) *Heron Garage Properties Ltd. v. Moss & Anor* [1974] 1 W.L.R. 148.
- (2) *Hawksley v. Outram* [1892] 3 Ch. 359, C.A.
- (3) *Aberfoyle Plantations Ltd. v. Khaw Bian Cheng* [1960] M.L.J. 46; [1959] 3 All E.R. 910.
- (4) *In re Sandwell Park Colliery Co.* [1929] 1 Ch. D. 277.
- (5) *Smith v. Butler* [1900] 1 Q.B. 694.
- (6) *Property and Bloodstock Ltd. v. Emerton* [1967] 3 All E.R. 321; [1968] Ch. 94.
- (7) *Eastham (Inspector of Taxes) v. Leigh London and Provincial Properties Ltd.* [1971] 1 Ch. 871.

HIGH COURT.

V.P. Pradhan for the plaintiffs.

C.V. Das for the defendants.

Cur. Adv. Vult.

Wan Hamzah J.: The plaintiffs caused a specially indorsed writ to be served on the defendants, claiming against the first defendant for an order of specific performance of an agreement dated March 21, 1975 whereby the first defendant agreed to buy from the plaintiffs 557,779 shares in Perforated Plates Sdn. Bhd. for \$780,890.60, of which a sum of \$78,089 had been paid as a deposit, and claiming against the second